

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>STANLEY HERBERT</b>	:	<b>Case No. C-1-00-855</b>
	:	
<b>Plaintiff,</b>	:	<b>Magistrage Judge Hogan</b>
	:	
<b>v.</b>	:	
	:	
<b>MILFORD TOWING &amp; SERVICE, et al.</b>	:	<b><u>PLAINTIFF’S MOTION IN LIMINE</u></b>
	:	<b><u>ON PRIOR CONVICTIONS</u></b>
<b>Defendants.</b>	:	

Defendants have indicated that they intend to raise plaintiff’s misdemeanors in this trial. Plaintiff seeks an order prohibiting defendants from mentioning this in voir dire, opening statements or questioning plaintiff about these convictions or introducing exhibits pertaining to this subject.

**ARGUMENT**

**Rule 609 Prevents Defendants From Unfettered Use of Evidence of Plaintiffs’ Prior Convictions To Attack Their Credibility.**

Rule 609 of the Federal Rules of Evidence addresses the use of evidence of prior convictions to impeach a witness. Under Rule 609, evidence that a witness in a civil matter has been convicted of a crime punishable by more than one year in prison is admissible only if the evidence survives the balancing test imposed by Rule 403.<sup>1</sup> Crimes involving dishonesty or false

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<sup>1</sup> Rule 403 allows for the exclusion of relevant evidence when the probative value of the evidence is “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

statements<sup>2</sup> are admissible without engaging in the Rule 403 balancing test and without regard to the length of the possible sentence. Fed. R. Evid. 609(a).

Plaintiff has not been convicted of a crime punishable by more than one year in prison nor have Plaintiffs' crimes involved dishonesty or false statement.

### **CONCLUSION**

Defendants should be prohibited from mentioning plaintiff's convictions in voir dire, opening statements or questioning plaintiff about these convictions or introducing exhibits pertaining to this subject.

Respectfully submitted,

s/Robert F. Laufman  
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<sup>2</sup> Plaintiffs' prior convictions do not involve crimes of dishonesty or false statements. According to the Advisory Committee Notes – Report of the Senate Committee on the Judiciary, crimes involving dishonesty or false statements are crimes such as “perjury or subornation of perjury, false statement, criminal fraud, embezzlement or false pretense, or any other offense in the nature of *crimen falsi*, the commission of which involves some element of untruthfulness, deceit or falsification bearing on the accused’s propensity to testify truthfully.”

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of October, 2003, a copy of the foregoing Plaintiff's Motion in Limine on Prior Convictions was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of this Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. Mail upon all parties for whom counsel has not yet entered an appearance.

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